Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 2 of the	)	
Commission's rules relating to	)	ET Docket No. 94-45
the marketing and authorization	)	RM-8125
of radio frequency devices.	)	
	)	

REPLY COMMENTS

AT&T Corp. ("AT&T") respectfully submits the following reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 94-110, released June 9, 1994.

All of the comments[1] generally support the proposals in the NPRM to modify the Commission's rules regarding the marketing and authorization[2] of radio frequency devices. The proposed marketing rules permit operation of all types[3] of unauthorized radio frequency

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1 The Appendix lists those comments and the abbreviations used herein to identify them.

2 Authorization encompasses the verification, type acceptance, notification and certification procedures in 47 C.F.R. §§ 2.902 and 2.904-2.906.

3 E. F. Johnson argues that, in order to protect against harmful interference, the proposed rules should not apply to equipment subject to the type acceptance procedure. AT&T's proposals that numerical limits be placed on operation of unauthorized devices and an experimental license required in the case of

(footnote continued on next page)

devices at trade shows[4] and on non-residential customer sites for market acceptability testing. In addition, under the proposed rules such devices can be offered for sale to commercial customers but cannot be delivered until authorized.

While some parties supported the marketing rules as written or with minor editorial suggestions,[5] others tempered their support by maintaining that those rules should go even further.[6] On the other hand, MSTV and CBEMA

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intentional radiators appropriately address this concern and thus support broad application of the new rules.

4 AT&T has no objection to assuaging EIA/CEG's fear (p. 8) that, because both trade shows and exhibitions are referred to by way of example in proposed § 2.803(c) on advertising and display, the reference to trade shows in proposed § 2.803(e)(2) on operation does not encompass exhibitions. To avoid any possible further misunderstanding, any such clarification should also apply to the reference to trade shows in 47 C.F.R. § 1204(a)(4) regarding importation and thus would best be made in the Commission's order, obviating any need for a rule change.

5 AMSC, EIA/CEG, Ericsson, Itron, NAB, TIA, Uniden.

6 ANS urged adoption of the proposal in EIA/CEG's Petition for Rulemaking permitting unauthorized devices to be offered for sale to all customers so long as delivery did not occur prior to authorization. The Commission recognized that enforcement of such an approach would be unmanageable (NPRM ¶ 9) and EIA/CEG's comments do not advocate it.

IBM's proposal that the rules permit sale of prototypes to users for market acceptability testing should be

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joined AT&T in qualifying that general support by suggesting improvements in the proposed rules to carry out the Commission's intent to prevent undue proliferation of untested and potentially noncompliant equipment.

Proposed § 2.803(e)(4) permits operation of an unauthorized device "at a business, commercial, industrial, scientific, or medical user's site, but not at a residential site" so long as such operation is necessary to determine customer acceptability because of the "unique capability of the device." As did AT&T, CBEMA and MSTV pointed out the breadth of the "business" and "commercial" categories and the blurred line between those sites and residential sites.[7]

These parties also agree that permitting operation at non-residential sites only when necessary to determine customer acceptability because of the unique capability of the device will be ineffective to bar widespread operation of untested devices. CBEMA refers to the experience of its

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rejected because it would incent manufacturers to maximize the number of potentially non-complying units in the hands of users and make tracing and recall of actually non-complying equipment difficult. AT&T's proposed 200-unit limit would ameliorate these problems but correspondingly reduce the potential revenue from such sales.

7 In MSTV's words, "everyone from an insurance salesman with a garage office, to a corner florist to IBM" (p. 8).

members that this limitation will be hard to apply, particularly because so many newer devices can reasonably be claimed to fit the language proposed in the rule.

Instead of problematic verbal description tests, the Commission should accept the proposal of AT&T and CBEMA that the new rule contain the 200-unit limit that presently applies to importation of unauthorized devices for compliance and market acceptability testing.[8] That limit has permitted manufacturers to accomplish necessary pre-marketing activities while protecting other users against the threat of harmful interference from widespread use of equipment that does not meet the emission standards.

Market acceptability testing in homes, which will become more important as telecommuting and home offices

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[8] 47 C.F.R. § 1204(a)(3). AT&T also urged that the new rules parallel the 10-unit limit on importation for use at trade shows (47 C.F.R. § 1204(a)(4)) and that an experimental license be required for such use in the case of intentional radiators. Both of these restrictions will help to protect other users from harmful interference caused by unauthorized equipment.

Ericsson, which generally supported the proposed marketing rules, errs in claiming that the Commission intended to permit importation of unlimited quantities of non-compliant devices for market acceptability testing so that proposed § 2.803(a) should be amended to reflect this intent. Nothing in the NPRM proposes any change in the present rules governing importation, which were addressed just two years ago. Amendment of Part 2 of the Rules Concerning the Importation of Radio Frequency Devices Capable of Causing Harmful Interference, 7 FCC Rcd. 4960 (1992).

expand, can safely be permitted under the numerical limit approach. MSTV's idea that "business" and "commercial" sites could be deleted and operation thus limited to "industrial, scientific or medical" locations is in the same vein but not as effective as specifying a number. Moreover, MSTV's approach would impair the usefulness of market testing.

In addition to proposing changes in the marketing rules, the NPRM also proposed various improvements in the rules governing the equipment authorization process. Aside from general expressions of support,[9] there was very little comment on these proposals. CBEMA joined AT&T in urging clarification of proposed § 2.938 to provide that a party who has modified equipment must retain the original drawings regarding that modification and any changes therein.[10] This would eliminate the possibility that the rule as written could be read to require the modifier somehow to obtain the original drawings from the grantee, manufacturer, or

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9 ANS, AMSC, Itron, E. F. Johnson, TIA, Uniden.

10 AT&T has no objection to CBEMA's position (pp. 5-6) that proposed § 2.909(c) be changed to eliminate the requirement that the modifier's name, address and telephone number be placed on the device. CBEMA appropriately supports requiring the modifier's FCC identifier or some other method of insuring identification of that party.

importer and correlatively to require that party to turn over those drawings.

CBEMA and AT&T each addressed the proposed changes in the record retention rules. CBEMA (p. 5) correctly observes that the proposed change to the preamble to 47 C.F.R. § 2.938 making that section applicable to verification as well as to grants of authorization can create confusion because proposed § 2.955 plainly also applies to verified devices. On the other hand, CBEMA (id.) is not correct in supporting the addition of detailed record retention requirements for verified devices. As AT&T explained (p. 8), this subject is already covered in the ANSI C63.4-1992 standard incorporated by reference in 47 C.F.R. § 15.31(a)(6), and procedures exist for incorporating future non-substantive changes by ANSI.

Rather than commenting on the rules proposed in the NPRM, two parties made proposals on matters not dealt with in the NPRM and thus beyond the scope of this proceeding. IBM (pp. 5 et seq.) urged that verification be substituted for certification as the method for authorizing personal computers and associated peripheral devices. GEL proposed deletion of the requirement for Commission acknowledgement of Class II permissive changes to certified

equipment (47 C.F.R. § 2.1043(b)).[11] While these proposals have merit, they should not be considered in this docket. Rather, separate notice and comment rulemaking proceedings should be instituted.[12]

CONCLUSION

The comments support the thrust of the rules proposed in the NPRM. For the reasons stated in AT&T's

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11 GEL's other point that a consistent definition should apply in 47 C.F.R. § 2.908 (a general definition unaffected by this proceeding), proposed § 2.924 (dealing with marketing products with multiple names, models or numbers under the same FCC Identifier) and proposed § 2.953(d) (dealing with when re-verification is required) is incorrect. Differences in language appropriately reflect the different issues dealt with in those sections.

12 Because CBEMA's earlier proposal for a "declaration" process for authorization of computing devices is similarly beyond the scope of this proceeding, CBEMA merely urges expeditious consideration of that proposal.

comments and reply comments, the Commission should adopt those rules with the changes proposed by AT&T.

Respectfully submitted,

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APPENDIX

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Association for Maximum Service Television, Inc. -- MSTV

Computer and Business Equipment Manufacturers Association -- CBEMA

Consumer Electronics Group of the Electronic Industries Association -- EIA/CEG

The Ericsson Corporation -- Ericsson

General Electric Lighting -- GEL

International Business Machines Corporation -- IBM

Itron, Inc. -- Itron

E. F. Johnson Company -- E. F. Johnson

Mobile and Personal Communications Section of the Telecommunications Industry Association -- TIA

National Association of Broadcaster -- NAB

Uniden America Corporation -- Uniden

CERTIFICATE OF SERVICE

I, Geraldine A. Gowers, do hereby certify that on this 4th day of October, 1994, a copy of AT&T's Reply Comments has been served by first class mail, postage prepaid, upon the parties listed below:

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